

Chapter 9 - Retailers

Overview

Introduction

This chapter provides an overview of the Retailer Requirements/Procedures for the Special Supplemental Nutrition Program for Women, Infants and Children

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Food Delivery System

Policy Number 9-1
Effective Date: October 1, 2002

Policy Statement

It is the policy of the Montana WIC Program that a retail purchase system is used for the delivery of food benefits.

A participant must travel to the retailer to exchange their WIC checks for the authorized food items. A participant may cash their WIC checks at any WIC-authorized retailer in Montana.

Free of Charge

Participants shall receive the WIC Program's supplemental foods free of charge.

Authorized Retailers

Only those food retailers authorized by the Montana WIC Program may redeem food instruments or otherwise provide supplemental foods to participants.

A list of Montana's WIC-authorized retailers by city is available at all local agencies.

Authority

Federal WIC regulations as published in 7 CFR 246.12(b)

Authorized Signature

Chris Fogelman, Manager, Nutrition Services

Administrative Review Policy - Retailer

Policy Number 9-2
Effective Date: October 1, 2002

Introduction

A full administrative review or an abbreviated administrative review shall be provided to a retailer upon request through which an appeal may be made for specific adverse actions described in the policy statement. The retailer has sixty (60) days from the date of receipt of the written notice to request an administrative review.

Policy for a Full Administrative Review

It is the policy of the Montana WIC Program to provide upon request a full administrative review to a retailer who has received the following adverse actions:

- denial of authorization based on the determination the retailer:
 - did not meet competitive price criteria for Montana WIC;
 - did not meet minimum variety and quantity of authorized supplemental foods for store size (Policy 9-9); or
 - is attempting to circumvent a sanction;
- termination of the agreement for cause;
- disqualification; or

imposition of a fine or a civil money penalty in lieu of disqualification.

Policy for an Abbreviated Administrative Review

It is the policy of the Montana WIC Program to provide upon request an abbreviated administrative review to a retailer who has received the following adverse actions:

- denial of authorization based on:
 - business integrity;
 - a current Food Stamp Program disqualification or civil money penalty for hardship;
 - Montana's retailer selection criteria if the basis of the denial is a:
 - WIC retailer sanction; or
 - Food Stamp Program withdrawal of authorization or disqualification;
- Montana's retailer limiting criteria (except for competitive price or minimum variety and quantity criteria); or
 - submission of the application outside the timeframes established for accepting and processing applications;
- termination of the agreement because of change in ownership, location, or cessation of operations;

- disqualification based on:
 - a trafficking conviction;
 - imposition of a Food Stamp Program civil money penalty for hardship; or
 - a mandatory sanction imposed by another WIC state agency; or
- civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC state agency.

Policy for Denial of Administrative Review

It is the policy of the Montana WIC Program to not grant an administrative review (full or abbreviated) if requested by the retailer and the basis of the request is:

- the validity or appropriateness of
 - Montana's retailer limiting criteria;
 - Montana's retailer selection criteria; or
 - Montana's participant access criteria and the participant access determination;
- the determination by Montana WIC as to whether the retailer had an effective policy and program in place to prevent trafficking and the retailer was not aware of, did not approve of and was not involved in the commission of the violation;
- expiration of the agreement;
- disqualification from the Montana WIC Program as a result of disqualification from the Food Stamp Program; or
- disputed food instrument payments or retailer claims (other than the opportunity to justify or correct a retailer overcharge or other error).

Authority

Federal WIC regulations as published in 7 CFR 246.18(a)(1)(I), 246.18(a)(1)(ii) and (246.18(a)(1)(iii))

Authorized Signature

Chris Fogelman, Manager, Nutrition Section

Use of Participant or Retailer Collections

Policy Number 9-3
Effective Date: October 1, 2005

Policy

It is the policy of the Montana WIC Program to use any funds collected from retailers or participants as Administrative funds for compliance investigations and/or education.

Rationale

Federal regulations allow the use of vendor and participant collections for any allowable NSA cost. The funds must be used in the fiscal year that:

- the initial obligation was made
- the claim arose
- the funds are collected, or
- after the funds are collected.

Compliance investigations are required by federal regulations. No additional funding is granted for compliance investigations. The use of vendor and participant collections ensure a specific amount of funds for compliance investigations.

Authority

Federal WIC regulations as published in 7 CFR 245.14(e)(1).

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Confidentiality of Retailer Information Policy

Policy Number 9-4
Effective Date: October 1, 2002

Introduction and Definition

Information about any retailer with the exception of name, address and authorization status is considered confidential. Release of confidential retailer information is limited by the Federal WIC Regulations.

Policy

It is the policy of the Montana WIC Program to restrict the release of confidential retailer information to:

- Persons whom the State Office has determined have a need to know for program purposes because of a direct connection with the administration or enforcement of the WIC Program or the Food Stamp Program, for example:
 - Montana WIC Program Local Agency Retailer Coordinator or their designate;
 - contractors hired by the Montana WIC Program to perform compliance buys or investigations of program abuse;
 - other WIC State Agencies;
 - other WIC State's Local Agencies; and
 - persons investigating or prosecuting WIC or Food Stamp Program violations under Federal, State or local law.
- Persons directly connected with the administration or enforcement of any Federal, State law (see notation).

Note: A written agreement must be entered into with any non-Federal agency specifying that information provided may not be used or disclosed except for the direct purpose of administration or enforcement of a Federal or State law.
- An individual Retailer when subject to an adverse action, including a claim information related to the adverse action.

The Montana WIC Program will apply the same limitations to the use and release of information obtained from the Food Stamp Program regarding Food Stamp Program retailers whether or not the retailer is also a WIC retailer.

Authority

Federal WIC regulations as published in 7 CFR 246.26(e) and (f)

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Notification of Retailer of Changes Policy

Policy Number 9-5
Effective Date: October 1, 2002

Introduction

In order to maintain a smooth transition to new policies or practices related to the retailer portion of the WIC Program, the retailers contracted with the Montana WIC Program must be informed of changes prior to implementation so they have a time period in which to make the necessary changes or choose to terminate the contract.

Policy

It is the policy of the Montana WIC Program to notify the Retailer at least thirty (30) days in advance of implementation or effective date of changes to the contract, policies or procedures which govern the retailer component of the WIC Program.

Notification may be in writing from the State Office or in an interactive training offer either by the State Office or the Retailer Coordinator at the local agency. In the case of interactive training, the thirty (30) day advance notification of changes must be met by the date of the first scheduled training. Any second offering of the same training to inform retailers of changes may be less than thirty (30) days prior to the implementation or effective date of the changes.

Authority

Federal WIC regulations as published in 7 CFR 246.12(h)(7)

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Store Types Not Authorized by WIC

Policy Number 9-6
Effective Date: October 1, 2005

Policy

It is the policy of the Montana WIC Program to only authorize stores that will meet the needs of the WIC participants. This limits the types of stores to grocery and grocery with pharmacy.

There are other store types that may meet the need of the WIC participants, but are not within the pricing criteria set by the Montana WIC program. Three types include ‘WIC Only’ stores, ‘Over 50 percent’ stores, and stand-alone pharmacies.

Based on federal regulations, Montana does not authorize ‘Over 50 Percent’ stores.

Definitions

‘WIC Only’ stores are stores that sell only WIC-approved foods to WIC participants. New WIC-only stores are not eligible for WIC participation under federal regulations. Montana did not have any WIC-only stores at the time these regulations went into effect.

‘Over 50 percent’ stores are stores that make more than 50-percent of their annual sales from WIC purchases. Under federal regulations, these stores do not qualify for WIC participation.

Stand-alone pharmacies are pharmacies that strictly sell pharmaceuticals. Their prices for standard formulas are higher than other authorized WIC retailers. Montana has worked directly with the formula manufacturers to obtain special formulas not readily available in the larger combination grocery-pharmacy retailers.

Authority

Public Law 108-447, Consolidated Appropriations Act, 2005

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Retailer Selection Criteria

Policy Number 9-7
Effective Date: October 1, 2002

Policy

It is the policy of the Montana WIC Program that businesses either applying or re-applying for authorization as WIC retailers must meet specific criteria before being approved. Retailers must maintain these standards throughout their contract period as a WIC retailer.

Rationale

Selection criteria ensures that retailers are able to meet the needs of their WIC participants/customers. This enables the WIC Program to ensure food dollars are spent efficiently, and to manage the retailer system effectively.

Initial Application Standards

- Holds a current tribal business license allowing the sale of food or a State of Montana “One-Stop” license authorizing the retailer as a “food purveyor”
- Has Workers’ Compensation coverage or similar private coverage.
- Has passed the most recent inspection by the local sanitarian.
- Has access for persons with disabilities.
- Has no history of WIC violations.
- Has no history of Food Stamp Program violations.
- Within the last six (6) years, neither the business nor any of its owners, officers or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity.
- Their food prices are equal to or under the maximum authorized for their assigned peer group
- Their infant formula prices are equal to or under the maximum authorized for their assigned peer group.
- Stock and provide a variety of foods in each of the following staple food groups on a continual basis:
 - meat, poultry and/or fish
 - bread and cereal
 - fruit and vegetables, and
 - dairy.
- Has the minimum food stock required by the Montana WIC Program, as specified in Policy 9-9.

Retailers new to the Montana WIC Program may apply for authorization at any time during the federal fiscal year.

Subsequent Application Standards

In addition to maintaining the standards for the initial application, a subsequent applicant must also meet the following standards:

- Within the last contract year, has maintained a minimum WIC participant/customer base:
- ‘Rural’ retailers have served at least five (5) WIC participants per month.
- ‘Urban’ retailers (those located in Billings, Bozeman, Butte, Great Falls, Helena, Kalispell or Missoula) have served at least ten (10) WIC participants per month.
- Has cashed a minimum of ten (10) percent of the current dollar value for their stocking level.
- Has attended the required annual WIC training.

Subsequent Application Standards (continued)

- Has successfully resolved and responded in writing, to all problems brought to their attention by the WIC Program within a sixty (60) day period.

Retailers applying for subsequent authorization must submit an application within the cover letter’s stated timelines, or risk losing their WIC authorization.

Change of Ownership

The authority to participate in the Montana WIC Program is not transferrable. The Montana WIC Program must be notified in writing of any change of ownership. A change of ownership can be, but is not limited to:

- A partial change of ownership (i.e., one partner buying out another).
- A complete change of ownership (i.e., an outside interest purchases the business).
- A change in corporate structure (i.e., going from ‘sole proprietor’ to ‘corporation’).

Whenever the Federal Employer Identification Number (FEIN) changes, the retailer must re-apply for WIC authorization as an initial applicant. Failure to do so will result in loss of WIC authorization.

The Montana WIC Program may not authorize an applicant if it is determined that the business was sold to circumvent a WIC sanction. If such determination is made after authorization is granted, the authorization (WIC Agreement) will be terminated.

Change of Location

A change of location may affect the WIC authorization. The Montana WIC Program must be notified in writing of any change of location. Authorization will **not** be affected if:

- The ownership remains the same.
- The old location is being closed, and the new location is considered a ‘replacement’ location.
- The new location is within two (2) miles of the old location.

Failure to notify the Montana WIC Program of a change in location will result in loss of WIC authorization.

Authority

Federal WIC regulations as published in 7 CFR 246.12(g)

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Retailer Peer Grouping

Policy Number 9-8
Effective Date: October 1, 2005

Policy

It is the policy of the Montana WIC Program to assign WIC-authorized retailers to a specific “peer group”. “Peer groups” are determined by statistical similarities shared by retailers throughout the state.

Purpose

The placement of retailers in “peer groups” will allow a closer monitoring of retailers, while participants are assured of being able to purchase the entire allotment of food on their WIC checks wherever they shop in the State of Montana.

Rationale

Federal regulations mandate that State agencies establish competitive pricing and price limitations for WIC retailers. Limitations must be established to ensure that retailers are within the same pricing structure as similar retailers throughout the state, and not overcharging the WIC Program. Peer groups are being created to statistically divide Montana retailers into groups that will best fit various criteria.

Peer groups in Montana were originally determined by the number of checkstands a WIC retailer had, and later influenced by the dollar value of the WIC checks cashed at the retail location. This did not take into consideration other important factors, such as location, Food Stamp sales, and retail total sales. A new peer grouping has been created, using this figures. However, in a state the size of Montana, ‘zip codes’ do not influence a statistical study. We continue to work with our peer grouping, and plan to introduce the BEA counties to see how it may influence peer groups.

Factors used to determine peer group placement may be modified periodically to achieve a more accurate grouping.

Authority

Federal regulations as published in 7 CFR 245.12(g)(3)(i)

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Retailer Stocking and Variety

Policy Number 9-9
Effective Date: October 1, 2002

Policy

It is the policy of the Montana WIC Program that businesses applying to become a grocer-type WIC retailer must carry and maintain a specific minimum variety and quantity of WIC-approved foods. This stock must be maintained at all times.

Determinant

Either the number of checkstands will determine the minimum quantity of WIC foods a retailer must carry OR the dollar volume of WIC checks cashed within the most recently completed federal fiscal year. New retailers will be assigned a stocking level based on the number of checkstands.

The Montana WIC Program may re-assign a retailer's stocking level if the WIC checks cashed by a retailer's business exceeds the corresponding dollar value, according to the figures on the latest TIP (The Integrity Profile) report.

A retailer will NOT be assigned a stocking level lower than that corresponding to the number of checkstands.

Assigned Levels

Grocer-type WIC retailers will be classified as a particular level, based on either the number of checkstands in the business OR the dollar volume of cashed WIC checks processed by that business during the last completed federal fiscal year, if the dollar value is greater than that assigned to the number of checkstands. Each level will be assigned a minimum quantity of food that must be stocked at all times. The four levels are:

Level	# of Checkstands / Monthly Cashed Checks \$ Value
1	1 to 2 checkstands OR less than \$1,500
2	3 to 4 checkstands OR less than \$4,000
3	5 to 7 checkstands OR less than \$9,000
4	8 or more checkstands

Level 1 retailers should review the "Infant Formula/Cereal Exemptions" policy, number 9-13.

Level 1 MINIMUM Stocking Requirements

Food Item	Quantity
Carrots, 1-lb or less	3 cans (plain) OR 3 packages fresh OR 3 packages frozen (plain)
Cereal 4 approved cold 1 approved hot	2 boxes each
Cheese, packages of 1-lb or less 2 different approved varieties	3 packages of each variety
Eggs, Grade AA or A, large	3 dozen
Infant Cereal, 2 grains 8-oz boxes, plain only	3 boxes of each grain
Infant Formula Enfamil LIPIL with Iron	8 12.9-oz cans of powdered 31 13-oz cans of concentrate
Infant Formula LactoFree LIPIL AND ProSobee LIPIL	4 12.9-oz cans of powdered of both 16 13-oz cans of concentrate of both
Juices 3 different approved types	4 cans in 46-oz canned OR 4 cans in 11.5 canned concentrate OR 4 cans in 11.5-12 oz frozen
Legumes, 1-lb bags 3 different approved varieties	2 packages of each variety
Milk, Reduced-Fat and Whole	3 gallons of each 6 half-gallons of each 2 quarts of each
Peanut Butter, 16- to 18-oz jars chunky, creamy, natural	3 jars
Chocolate Milk	2 gallons, either in a combination of gallon and half-gallon containers, or all in half-gallon containers
Tuna, 6-oz cans, water-packed only	4 cans

Level 1 MINIMUM Stocking Requirements

Food Item	Quantity
Carrots, 1-lb or less	5 cans (plain) OR 5 packages fresh OR 5 packages frozen (plain)
Cereal 4 approved cold 1 approved hot	4 boxes each
Cheese, 1-lb or less 2 different approved varieties	5 packages of each variety
Eggs, Grade AA or A, large	5 dozen
Infant Cereal, 2 grains 8-oz boxes, plain only	5 boxes of each grain
Infant Formula Enfamil LIPIL with Iron	16 12.9-oz cans of powdered 46 13-oz cans of concentrate
Infant Formula LactoFree LIPIL AND ProSobee LIPIL	8 12.9-oz cans of powdered of both 23 13-oz cans of concentrate of both
Juices 3 different approved types	6 cans in 46-oz canned OR 6 cans in 11.5 canned concentrate OR 6 cans in 11.5-12 oz frozen
Legumes, 1-lb bags 3 different approved varieties	4 packages of each variety
Milk, Reduced-Fat and Whole	5 gallons of each 9 half-gallons of each 3 quarts of each
Chocolate Milk	4 gallons, either in a combination of gallon and half-gallon containers, or all in half-gallon containers
Peanut Butter, 16- to 18-oz jars chunky, creamy, natural	5 jars
Tuna, 6-oz cans, water-packed only	6 cans

Level 3 MINIMUM Stocking Requirements

Food Item	Quantity
Carrots, 1-lb or less	8 cans (plain) AND 8 packages fresh OR 8 packages frozen (plain)
Cereal 4 approved cold 1 approved hot	8 boxes each of 4 approved cold plus 5 boxes of 1 approved hot OR 6 boxes each of 5 approved cold plus 5 boxes of 1 approved hot
Cheese, 1-lb or less 2 different approved varieties	8 packages each of 2 varieties OR 6 packages each of 3 varieties
Eggs, Grade AA or A, large	8 dozen
Infant Cereal, 2 grains 8-oz boxes, plain only	8 boxes each of 2 grains OR 6 boxes each of 3 grains
Infant Formula Enfamil LIPIL with Iron	32 12.9-oz cans of powdered 46 13-oz cans of concentrate
Infant Formula LactoFree LIPIL AND ProSobee LIPIL	16 12.9-oz cans of powdered of both 23 13-oz cans of concentrate of both
Juices 3 different approved types	8 cans in 46-oz canned OR 8 cans in 11.5 oz canned concentrate OR 8 cans in 11.5-12 oz frozen
Legumes, 1-lb bags 3 different approved varieties	6 packages each of 3 varieties OR 4 packages each of 4 varieties
Milk, Acidophilus or Lactose-Reduced	5 gallons in any combination of quart and half-gallon containers
Milk, Reduced-Fat AND Whole	8 gallons of each 12 half-gallons of each 5 quarts of each
Chocolate Milk	6 gallons, either in a combination of gallon and half-gallon containers, or all in half-gallon containers
Peanut Butter, 16- to 18-oz jars chunky, creamy, natural	8 jars

Food Item	Quantity
Tuna, 6-oz cans, water-packed only	8 cans

Level 4 MINIMUM Stocking Requirements

Food Item	Quantity
Carrots, 1-lb or less	10 cans (plain) AND 10 packages fresh OR 10 packages frozen (plain)
Cereal 4 approved cold 1 approved hot	10 boxes each of 4 approved cold plus 5 boxes of 1 approved hot OR 8 boxes each of 5 approved cold plus 5 boxes of 1 approved hot
Cheese, 1-lb or less 2 different approved varieties	12 packages each of 2 varieties OR 8 packages each of 3 varieties
Eggs, Grade AA or A, large	10 dozen
Infant Cereal, 2 grains 8-oz boxes, plain only	12 boxes each of 2 grains OR 8 boxes each of 3 grains
Infant Formula Enfamil LIPIL with Iron	36 12.9-oz cans of powdered 62 13-oz cans of concentrate
Infant Formula LactoFree LIPIL AND ProSobee LIPIL	18 12.9-oz cans of powdered of both 32 13-oz cans of concentrate of both
Juices 3 different approved types	10 cans in 46-oz canned OR 10 cans in 11.5 canned concentrate OR 10 cans in 11.5-12 oz frozen
Legumes, 1-lb bags 3 different approved varieties	10 packages each of 3 varieties OR 8 packages each of 4 varieties
Milk, Acidophilus or Lactose-Reduced	8 gallons in any combination of quart and half-gallon containers
Milk, Reduced-Fat AND Whole	12 gallons of each 24 half-gallons of each 10 quarts of each
Chocolate Milk	10 gallons, either in a combination of

Food Item	Quantity
	gallon and half-gallon containers, or all in half-gallon containers
Peanut Butter, 16- to 18-oz jars chunky, creamy, natural	10 jars
Tuna, 6-oz cans, water-packed only	10 cans

Dollar Value Updates

The Montana WIC Program will review the dollar value associated with each stocking level on an annual basis to determine if the value should be updated.

Authority

Federal WIC regulations as published in 7 CFR 246.12(g)(3)

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Formula Purchasing Requirements

Policy Number 9-10
Effective Date: October 1, 2005

Policy

It is the policy of the Montana WIC Program to restrict the purchase of infant formula by WIC retailers or retailer-pharmacies to those member entities of a list created and maintained by the Montana WIC Program.

This list will be shared with all authorized WIC retailers and retailer-pharmacies at least once every federal fiscal year.

Rationale

The purpose of this policy is to ensure formula safety by requiring retailers to purchase WIC infant formula from appropriately-licensed businesses. Pursuant to federal regulations, the list of businesses on this list will consist of formula manufacturers, licensed food distributors, and authorized WIC retailers within the State of Montana, or those entities licensed to do business in Montana.

Authority

Section 203 (e) (8) of the Child Nutrition and WIC Reauthorization Act of 2004, P.L. 108-265.

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Food Purchasing/Pricing

Policy Number 9-11
Effective Date: October 1, 2002

Policy

It is the policy of the Montana WIC Program that WIC participants be able to purchase all food items authorized on their WIC checks. Quarterly price surveys are requested to determine regional averages, and to adjust the base prices according.

Retailer personnel may not ask the WIC participant to pay the difference between the actual cashed value and the “Not to Exceed” amount. Retailer personnel may not give the WIC participant ‘change’ from the “Not to Exceed” amount.

Rationale

The purchase price may not exceed the value of the “Not to Exceed” amount printed on the face of the WIC check. This means that the retailer may have to charge less than the actual cost. This requirement provides an incentive for retailers to update their prices in a timely manner. Setting a price limit is a cost-containment measure, which helps to reduce the potential for retailer fraud.

Method

Prices authorized on the WIC checks are based on the quarterly price surveys submitted by the authorized WIC retailers. Average prices are calculated by peer group. The Montana WIC Program uses 90-percent of the highest peer-group price per item and adds a variance to it. If the highest peer-group price is much greater than those of the other peer-group prices, it will be used as the maximum dollar value. This process creates the “Not to Exceed” amount, which is acceptable at the greater majority of retailers throughout the state.

Authority

Federal WIC regulations as published in 7 CFR 246.12(g)(3); the Montana Retailer Agreement

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Store Sales, Specials and Coupons

Policy Number 9-12
Effective Date: October 1, 2005

Policy

It is the policy of the Montana WIC Program that WIC participants be able to take advantage of store sales, special promotions (such as store “club cards”) and coupons when using their WIC checks. This also includes, but is not limited to “Buy One, Get One Free”, “Buy One, Get One (at a percentage off)”, or similar promotions.

Rationale

Taking advantage of store sales and specials will help teach WIC participants how to wisely shop for their groceries. It will also save the WIC Program food dollars by reducing the “Actual \$ Amount of Sale” on the WIC checks.

Procedure

The WIC participant will give coupons and/or store “club card” to the store cashier at the time the WIC checks are redeemed.

The cashier will ensure the prices charged include any store sale or other promotion, or the value of the coupons are deducted from the transaction total.

Reference

The Montana WIC Retailer Agreement.

Approval Signature

Chris Fogelman, Manager, Nutrition Services

Infant Formula/Cereal Exemptions

Policy Number 9-13
Effective Date: October 1, 2002

Policy

It is the policy of the Montana WIC Program that WIC retailers having an extremely small infant population be allowed to apply for an exemption to the stocking requirement for infant cereal and/or infant formula. The exemption will be for the length of the current contract period. The exemption may be canceled if the infant population increases significantly.

Exemptions will NOT be given to initial applicants.

Rationale

The Montana WIC Program acknowledges that infant formula is a costly expense. The WIC Retailer Agreement requires the retailer to stock three formulas: two standard milk-based and one standard soy-based in both concentrate and powdered formats. Retailers may lose money on infant cereal and/or infant formula if these items are not sold in a timely basis. In order to encourage retailer participation in smaller communities, an exemption may be granted upon State approval of a written request, per the Retailer Agreement.

The report of a small infant population must be verified in writing by the local WIC agency's retailer coordinator.

Procedure

Retailers applying for and receiving an infant formula/cereal stocking exemption must post a sign directing participants to a contact person. The contact person will then order the required product from their wholesaler. The formula must be available to the participant within 72 hours (three days). The retailer must continue to have the stock available as long as the participant is in need of the formula.

Upon receipt of their FI's, participants may inform the retailer contact person of the amount of formula required so the formula could be ordered and be available for purchase.

Reference

The Montana WIC Retailer Agreement.

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Routine Retailer Monitoring Visits

Policy Number 9-14
Effective Date: October 1, 2002

Policy

It is the policy of the Montana WIC Program that at least five (5) percent of authorized retailers will receive a routine monitoring visit each federal fiscal year. The Montana WIC Program may request the local WIC retailer coordinator to conduct such visits.

Rationale

Monitoring visits allow the WIC Program to examine actual stocking variety and quantity, to review WIC checks already accepted that day, and to possibly watch WIC purchase(s) in progress. This information allows the WIC Program to detect possible fraud and/or abuse, discuss with the retailer staff any problems/solutions, and the opportunity to clarify any misunderstandings or misconceptions. Monitoring visits will not be pre-scheduled with retailer staff

Criteria

Criteria used to select retailers for monitoring visits include, but are not limited to:

- retailers whose contracts will expire within the next 12 months;
- retailers in a service area being monitored by the Montana WIC Program;
- retailers classified as “high risk” but not having a form of compliance investigation;
- retailers having verbal complaints from WIC participants;
- retailers experiencing check-cashing problems.

Authority

Federal WIC regulations as published in 7 CFR 246.12(j)

Approval Signature

Chris Fogelman, Manager, Nutrition Section

High Risk Evaluation Criteria

Policy Number 9-15
Effective Date: October 1, 2002

Policy

It is the policy of the Montana WIC Program that standardized criteria be used as guidelines to evaluate WIC retailers on a quarterly basis. Such criteria will be applied equally to all retailers.

Retailers identified by one or more items will be evaluated to determine if on-site training, a monitoring visit or a compliance investigation is warranted.

Rationale

Criteria is needed to evaluate how the WIC Program is actually handled at the retail sites, and to ensure that checks are processed according to established WIC procedures. Criteria will show where abuse or fraud may take place.

Criteria

High-risk criteria will include, but not be limited to:

- Small amount of variance in check prices by retailer;
- High means in check prices by retailer;
- Large WIC business volume by retailer;
- Large percentage of checks cashed by retailer in excess of 100% of the regional average price;
- Large percentage of the WIC service area's total WIC redemptions;
- Large number of participants redeeming checks outside their WIC service area by retailer;
- Large number of high-risk participants redeeming checks with retailer;
- Two (2) or more similar documented complaints from WIC participants within a thirty (30) day period.

Follow-Up Action

High-risk retailers will be ranked to determine the order in which a compliance investigation will be implemented. A compliance investigation will consist of either a compliance buy or an inventory audit.

Authority

Federal WIC regulations as published in 7 CFR 246.12(j)

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Compliance Investigations

Policy Number 9-16
Effective Date: October 1, 2002

Policy

It is the policy of the Montana WIC Program that compliance investigations be used to evaluate high-risk WIC retailers, as defined in Policy 9-15. A minimum of five (5) percent of all authorized WIC retailers will receive a compliance investigation annually. These retailers will be identified as having high risk criteria. If less than 5% of retailers are categorized as high risk, the balance will be randomly selected.

Rationale

Program compliance is mandatory to operate an efficient and effective program. Abusive retailers must be removed from the program to ensure the WIC Program is utilized, to the greatest extent possible, by participants throughout the state.

Compliance investigations will be performed by State personnel or their contracted designee.

Defined Investigations

Compliance investigations shall be accomplished by conducting either an:

- **Inventory audit** - a covert on-site comparison of the retailer's inventory to WIC purchases within a specified time period. Retailers are required by their WIC agreements to maintain their inventory records for a minimum period of three (3) years; or a
- **Compliance purchase** - a covert WIC purchase. Compliance purchases will be performed in a series to verify Program abuse by the retailer.

Sanctions

Sanctions will be issued for any violations found in a compliance investigation. Sanction notification will be sent via certified mail, unless such notification would compromise an investigation of a violation that requires a pattern of occurrences.

Sanctions for violations requiring only one instance of a violation that would result in disqualification will not be given advance notice. Sanctions for other violations will be implemented immediately unless an Administrative Review is requested by the retailer.

Montana defines a "pattern of violations" as three instances of the same violation being committed by store personnel. This could be a single person or multiple persons committing the same violation.

Authority

Federal WIC regulations as published in 7 CFR 246.12 (j)(4)

Approval Signature

Chris Fogelman, Manager, Nutrition Section

WIC Participant Hardship Access Criteria

Policy Number 9-17
Effective Date: October 1, 2002

Policy

It is the policy of the Montana WIC Program that WIC participant hardship access criteria be established to ensure WIC participants have access to authorized retailers within their geographic area.

Rationale

WIC participant hardship access criteria are required by federal regulations. The criteria may be used to determine if WIC participants will experience food access difficulties when disqualifying a WIC retailer within a geographic area. The criteria may also be used to determine if additional retailers are justified within an area.

Criteria

- In rural areas, “Inadequate Participant Access” would be defined as having to travel a distance greater than ten (10) miles, one way, from where the participants cash the majority of their WIC checks.
- In ‘urban’ areas (Billings, Bozeman, Butte, Great Falls, Helena, Kalispell or Missoula), “Inadequate Participant Access” would be defined as having to travel a distance greater than two (2) miles, one way, from where the participants cash the majority of their WIC checks.

Authority

Federal WIC regulations as stated in 7 CFR 246.12(l)(1)(ix)

Approval Signature

Chris Fogelman, Manager, Nutrition Section

Banking Services

Policy Number 9-18
Effective Date: October 1, 1997

Policy

It is the policy of the Montana WIC Program to contract with a financial institution independent of Montana government for the purpose of processing, with pre-payment edits, WIC food instruments which are deposited by authorized WIC retailers in local bank accounts and cleared through normal banking processes for payment.

Background

The Montana WIC Program is required to reconcile all food instruments issued and identify the disposition of each as to validly redeemed, lost or stolen, expired, duplicate, voided or not matching issuance records.

Authority

Federal WIC regulations as published in 7 CFR 246.12(k) and 246.13

Approval Signature

Chris Fogelman, Manager, Nutrition Section

WIC Retailer Requirements

Definition

A Montana WIC retailer is a business that contracts with the Montana WIC Program to accept WIC checks and furnish WIC-authorized foods to WIC participants.

There are two basic types of WIC retailers:

- Retail Grocer - carries a required variety of WIC-authorized foods
- Retailer-Pharmacy - meets the Retail Grocer requires, AND has access to specific formula

General Requirements

The following are qualifications for becoming a Montana WIC retailer:

- The business must be licensed with the State of Montana
- The business must have a permanent location; i.e., no stores on wheels
- The business must stock and maintain appropriate quantities and varieties of WIC authorized foods (see specific retailer type)
- The business must be accessible to WIC participants, parents or caretakers of infant and child participants, or proxies
- The business or its owners must not have been disqualified from the Food Stamp Program
- The business has provided assurance of compliance with the requirements of 7 CFR Part 3017 regarding non-procurement, debarment/suspension.
- The retailer has on the shelf and in stock the minimum quantity and variety of WIC approved food items with prices plainly marked on the product or shelf.
- The retailer has no previous conviction of or a civil judgement against them for a business-related felony or first-degree misdemeanor within six (6) years, including any criminal conviction for a program violation by any current employees or owners, officers, directors or partners whose duties include handling WIC checks.
- The retailer has no history of serious WIC non-compliance during a three (3) year period immediately prior to the date of application. “Serious” WIC non-compliance includes, but is not limited to:
 1. disqualification from WIC for two or more years as a result of the action of the retailer, one of its employees, or owners, officers, directors or partners;
 2. termination of a previous WIC agreement with an outstanding reimbursement or sanction points assigned; or
 3. failure to take requested action thirty (30) days after notification by certified mail, failure to provide requested data or records, failure to allow monitoring of the retailer, or failure to attend the required training.

Disqualification from the WIC Program may result in automatic disqualification from the Food Stamp Program.

- The retailer has no history of serious Food Stamp Program (FSP) non-compliance during a three (3) year period immediately prior to the date of application. “Serious” FSP non-compliance includes:
 1. current disqualification from the FSP; or
 2. receipt of a civil money penalty in lieu of a disqualification.

Disqualification from the Food Stamp Program may result in automatic disqualification from the WIC Program.

Retailer-Pharmacy

Retailer-Pharmacies must have access to, not necessarily have on hand, the following:

- Alimentum, in 32-oz ready-to-feed
- Analog XP, in 14-oz powdered
- LactoFree, in 13-oz concentrate and 14-oz powdered
- Nutramigen, in 13-oz concentrate, 16-oz powdered, 32-oz ready-to-feed
- Pediasure, in 8-oz ready-to feed
- Pediasure with Fiber, in 8-oz ready-to-feed
- Phenex-1, in 12.3-oz powdered
- Phenex-2, in 11.4-oz powdered
- Phenyl-Free, in 16-oz powdered
- Portagen, in 16-oz powdered
- Pregestimil, in 16-oz powdered
- RCF, in 13-oz concentrate
- Similac PM 60/40, in 16-oz powdered
- Suplena, in 8-oz ready-to-feed
- Sustacal with Fiber, in 8-oz ready-to-feed
- other formula generally available through usual pharmaceutical suppliers

Retail Grocery Store

The following are the minimum variety requirements for a grocery store to become a WIC retailer. These should be compared to the authorized food lists to determine exact brands:

- Infant Formula: both powdered and concentrated of the three current contracted milk-based and soy-based formula (currently Mead Johnson’s Enfamil LIPIL with Iron, LactoFree LIPIL, and ProSobee LIPIL);
- Infant Cereal: TWO of the listed grains, plain (no fruit or formula added);

Small stores not having the infant population to justify carrying either the infant formula and/or the infant cereal must contact the Montana WIC Program in writing for an exemption. A sign must be posted in the store instructing the WIC participants whom to contact to order the infant formula/cereal.

- Carrots: one-pound or less packages in canned, fresh, or frozen
- Cereal: FOUR cold and ONE hot of the listed varieties;
- Cheese: TWO of the listed varieties
- Chocolate Milk: in either a combination of gallon and half-gallon containers or all in half-gallon containers
- Dried Beans/Peas: THREE of the listed varieties in one-pound packages;
- Juices: THREE different flavors in canned, canned concentrate, or frozen, or any combination of the three formats;
- Milk: WHOLE and ONE REDUCED-FAT in gallon, half-gallon, and quart containers;
- Peanut Butter: 16-oz to 18-oz jars only, plain (no jelly-added or reduced-fat);
- Tuna: 6-oz cans, water-packed only, light ONLY;

Required Quantities

A specific minimum quantity of authorized WIC foods must be in stock at all times. Stocking level will be determined by the assigned peer group, based on the retailer's geographic area, store size in square footage, number of checkstands, and dollar volume of WIC business.

See "Retailer Stocking and Variety", policy # 9-9.

Timeline for Response to Retailer Application Requests

Introduction

In order to respond to a retailer's request for authorization to become a WIC Retailer, a timeline has been established. The timeline allows for a reasonable response time to requests for information by both the retailer and the State Office.

It is estimated the complete process using the maximum amount of response time for each step, will require ninety (90) days. Failure to respond in a timely manner by the retailer does not reduce the amount of time required by the State Office to respond. Also, failure by the State Office to meet the response deadlines, does not justify a request for an administrative review.

Documentation

As steps are completed, documentation of correspondence received and sent, phone conversations, and e-mails will be maintained. All written mail correspondence will be sent with return receipt requested. The documentation will include date, content, persons involved, items (or copies of items if not standard, for example: application form), mail receipts and signature of State WIC staff.

Timeline

An application request by a retailer will begin the timeline. The timeline is found in Attachment A.

Step	Responsible Person	Action		Timeline
1	Retailer or Local Agency	A written or verbal request is received by the State Office (SO) for a retailer application.		Start
2	Retailer Coordinator (RC)	Mail application to retailer.		3 working days
3	Retailer	Return of completed application containing all requested information.		10 working days
4	RC	IF COMPLETE: Verify information as required IF INCOMPLETE: Contact retailer for additional information and verify available information as required.		10 working days Timeline halted until complete information received from retailer
5	RC	Contact Local Agency to perform an on-site visit to review retailer applicant. Mail appropriate materials for visit.		Upon receipt of complete application.
6	Local Agency Retailer Coordinator (LARC)	On-site review of retailer applicant. IF: 1 or 2 clinic days per month IF: 3 or more clinic days per month		30 days 20 days
7	LARC	Submit completed on-site visit forms to SO.		Immediately after completion of on-site visit.
8	RC	IF information received and verified indicates. . . • an acceptable retailer Δan unacceptable retailer	THEN . . . • The contract is mailed for signature with a cover letter Δa letter explaining the reason for denial is sent. If appropriate according to Policy 8-XX, a notice of a right to an administrative review is included.	10 working days of receipt of completed application and on-site visit report.
9	Retailer	Contract signed by retailer and returned.		5 working days
10	RC	Contract signed by retailer coordinator. A copy of the contract, retailer stamp and a copy of the Montana WIC Retailer Manual is sent to the retailer. The local agency retailer coordinator is contacted to schedule initial retailer training.		5 working days

Step	Responsible Person	Action	Timeline
11	LARC	Initial retailer training is completed and supporting documentation is sent to the state office. IF . . . 1 or 2 clinic days per month 3 or more clinic days per month	 30 days 20 days

Initial Retailer Application

New Retailer Authorization

New (i.e., not currently participating) retailers must contact the Montana WIC Program to receive an application packet. Applications for new retailers will be accepted at any time. The application packet will contain a description of the WIC Program, an outline of the check-cashing requirements, an application form, and a price survey. The application form and a price survey must be received and reviewed by the Montana WIC Program before a contract will be issued and authorization granted.

An Initial Visit Report must also be received and reviewed before grocery stores may be authorized.

Initial Visit

An initial visit will be made to retail grocery stores to ensure the required quantities and variety of authorized foods are available. This visit will be made by either state or local agency staff, and an inventory will be made at the time, and signed by the WIC staff member and a store representative. This initial visit must be made and documented before the grocery store may be authorized as a retailer.

The Initial Visit Report will be sent to the Montana WIC Program for review and approval. If the report does not indicate the required quantities and varieties of WIC foods are in stock, the Retailer Unit will write to the applicant describing the shortages and request a written response. A subsequent on-site visit must be documented, received, reviewed and approved before contracts can be issued to the applicant.

Retailer Contract

Upon receipt and approval of the application form, price survey, and initial visit report, applicants will be sent, by certified mail, two copies of the DPHHS/WIC contract already signed by the Retailer Unit. One copy must be signed and returned to the Retailer Unit; the other copy is to be maintained by the applicant for their records.

In the case where contracts are signed at the corporate headquarters, a copy of the signed contract will be sent to the store's manager for their review and records.

Retailer Authorization

Upon receipt of the signed contract, the Retailer Unit will send to the retailer, by certified mail, the assigned retailer stamp, two store signs, the WIC Retailer Guide, a supply of Report of Attempted Abuse forms, and a supply of the Authorized Foods List for each checkstand.

The Retailer Unit will notify the local agency retailer coordinator of this authorization, who, in turn, will notify WIC participants in the area.

The Retailer Unit will authorize the retailer in VMS, and send notification to the WIC bank.

Subsequent Retailer Application

Review Process

Review of retailer files due to expire will start at least 120 days (i.e., four months) prior to expiration. Retailers whose files pass the 'Retailer Compliance Assessment' will be sent a packet to apply for subsequent authorization. Subsequent authorization is NOT automatic, but will be based on the same criteria as first-time applicants.

Retailers not passing the 'Retailer Compliance Assessment' will be sent, by certified mail, a letter explaining the concerns of the WIC Program. A written response or corrective action plan will be required. If these concerns cannot be resolved, a subsequent application will not be issued.

Retailer Compliance Assessment

An annual retailer compliance assessment will be done to determine if an authorized retailer with an expiring contract should be considered for renewal of WIC authorization. The following are components of the retailer assessment:

- Review the retailer's check-redemption history
- Review the file for complaints, timeliness of price surveys, violations and/or sanctions
- Review of the retailer monitoring reports
- Review of the retailer on-site visit reports
- Review retailer information available through the STARS system
- Review of any questionable Food Stamp information with Montana Food Stamp Officer-in-Charge
- Review of the retailer's attendance at annual trainings
- Review to ensure the retailer maintained the minimal customer base
- Review to ensure the retailer maintained the minimal WIC sales base

If the retailer passes the review, an application packet will be sent.

If the retailer does not pass the review, a letter will be sent describing the problems and requesting a corrective action plan.

Subsequent Application Process

Upon receipt of the completed application form, the Retailer Unit will compare the information to that on file. Any changes will be documented and verified. If all information is deemed acceptable, two signed copies of the DPHHS/WIC contract will be issued to the retailer. One copy is to be signed and returned to the Retailer Unit. The second copy is for the retailer's records. In cases where contracts are signed and maintained at the corporate headquarters, a copy of the signed contract will be sent to the store's manager.

If items reported on the application form are not acceptable, a letter will be sent to the retailer describing the problems and requesting a written response or corrective action plan. Contracts will not be issued until all matters are clarified to the satisfaction of the Retailer Unit.

Right of Refusal

A retailer is not obligated to apply for subsequent WIC authorization. A retailer may withdraw from the WIC Program by written notification, stating the date termination is desired. The WIC stamp must be returned to the Montana WIC Program at that time.

The Montana WIC Program will send a letter of acknowledgment to the retailer when the retailer stamp is returned.

Authorization Renewal

Upon receipt of the signed contract, the Retailer Unit will enter the new expiration date into VMS.

Administrative Review - Retailer

Introduction

A retailer may request an administrative review due to receipt of an adverse action. An administrative review will be provided subject to Policy 9-2.

At the time an adverse action is invoked, a written notice will be sent to the retailer. The notice will contain the effective date, the procedure to follow to obtain an administrative review (the notice must specify which type of review may be requested) and the timeframe for the request. If the adverse action is related to disqualification, the notice will contain the following statement: “This disqualification from Montana WIC may result in disqualification as a retailer in the Food Stamp Program. Such disqualification is not subject to administrative or judicial review under the Food Stamp Program.”

A disqualification as a result of a conviction of trafficking will be effective immediately.

General Conditions

1. The retailer has sixty (60) days from the date of receipt of the written notice of adverse action to request an administrative review. The request for an administrative review may be made through the Local Agency Retailer Coordinator or the Montana WIC State Office. The request may be written or verbal.
2. The Montana WIC Program will determine the type of administrative review allowed according to Policy 9-2.
3. If a retailer is allowed to continue operation as a Montana WIC Retailer during the process of an administrative review, the terms of the Montana WIC Retailer Agreement are still in force and the retailer must comply with the terms.
4. If the decision of the administrative review upholds the adverse action, this will be the final action taken by the Montana WIC Program. Any adverse action related to the administrative review which has not already taken effect, must do so on the date the retailer receives the notification of the decision.
5. The retailer may appeal the administrative review decision in District Court in the First Judicial District of the State of Montana, in and for the County of Lewis and Clark within thirty (30) days of receiving the written decision.

Procedure for a Full Administrative Review

- The Montana WIC Program will set the date for a full administrative review within three weeks of the receipt of the request.

- The retailer will be notified in writing within a minimum of ten days in advance of time and place of the full administrative review.
- A full administrative review for a retailer will be held in the county in Montana in which the business operation in question is physically located.
- The full administrative review will be conducted by a fair and impartial official according to 7 CFR 246.18 and applicable portions of Title 2, Chapter 4 Montana Code Annotated, whose decision will rest solely on the evidence presented at the hearing and the state's approved policies and procedures governing the Montana WIC Program.
- The retailer will have the opportunity to:
 - a. review the case file prior to the full administrative review;
 - b. representation by legal counsel;
 - c. cross-examine adverse witnesses (protection of the identity of investigators may result in the examination being conducted "in camera" or with the witness behind a protective screen);
 - d. present his/her/its case; and
 - e. reschedule the full administrative review date once upon request.
- The retailer will be notified of the decision of the full administrative review within ninety (90) days of the receipt of retailers request for an administrative review. The notification must include the basis for the decision. Failure on the state's part to meet the decision notification timeframe is not grounds for overturning the adverse action.

246.18(b), (d), (e) and (f)

Procedure for an Abbreviated Administrative Review Responsibilities

- The retailer will be notified in writing if an abbreviated administrative review is granted. The retailer will be informed of his/her/its opportunity to provide a written response to the adverse action.
- A fair and impartial decision-maker who is someone other than the person who made the initial decision to impose the adverse action will review the information provided to the retailer about the cause of the adverse action and the retailers written response. The decision-maker will make a decision based solely on whether the approved policies and procedures governing the Montana WIC Program were correctly applied.
- The retailer will be notified of the decision of the abbreviated administrative review within ninety (90) days of the receipt of retailer's request for an administrative review. The notification must include the basis for the decision. Failure on the state's part to meet the decision notification timeframe is not grounds for overturning the adverse action.

246.18 (c), (d), (e) and (f)

Release of Confidential Retailer Information

Introduction

The release of retailer information beyond retailer name, address and authorization status is directed by Policy 9-3. All requests for confidential retailer information must be directed to the State Office.

Requests for confidential retailer information will be treated the same for a WIC Retailer or a Food Stamp Program Retailer.

Who May Authorize

The Montana Retailer Coordinator, Administrative Services Unit Lead or the Montana WIC Program Manager will determine the appropriateness of a request for confidential retailer information.

Requirements

Requests for confidential retailer information from an entity outside of the Montana WIC Program must be in writing.

Timeline

The Retailer Coordinator will respond to the request for confidential information within ten (10) working days with the exception when legal advice or a legal opinion is sought from the DPHHS legal services. In the event the request to legal services delays the response, the Retailer Coordinator will notify the requestor in writing of the delay. No request response will be delayed beyond thirty (30) days.

Documentation

Any request for confidential retailer information must be documented in the Retailer's file by dates including any action taken, agreement for release or information released. State Office staff responsible for each action must sign the documentation.

Procedure for a Montana WIC Program Local Agency Request or a Montana WIC Contractor

The procedure to follow if the requesting entity is a Montana WIC Program Local Agency or a Montana WIC Contractor is contained in Table 1 below.

Table 1

Step	Action
1	A written or verbal request for confidential retailer information is received from a Montana Local Agency Retailer Coordinator (LARC), their designate or a Montana WIC Contractor.
2	The Retailer Coordinator will contact the LARC or Contractor to determine the purposed use of the information requested.
3	IF the use of the information requested is ... THEN the Retailer Coordinator will ... appropriate, release it. inappropriate, not release the information and explain to the LARC or Contractor why it can not be released.
4	The Retailer Coordinator documents and signs in the Retailer's file the date of the request, dates of other contacts, persons involved, information requested, purposed use of the information, and action taken.

Procedure for a Food Stamp Program Request

The procedure to follow if the requesting entity is the Food Stamp Program is contained in Table 2 below.

Table 2

Step	Action
1	A written request for confidential retailer information is received from the Food Stamp Program
2	The Retailer Coordinator will contact the Food Stamp Program to determine the purposed use of the information requested.
3	IF the use of the information requested is ... THEN the Retailer Coordinator will ... appropriate, release it. inappropriate, not release it and explain in writing to the Food Stamp Program why it can not be released.
4	The Retailer Coordinator documents and signs in the Retailer's file the date of the request, dates of other contacts, persons involved, information requested, purposed use of the information, and action taken. Copies of correspondence regarding the

Step	Action
	request will be filed in the Retailer's file.

Procedure for Another WIC State or Local Agency Request

The procedure to follow if the requesting entity is another WIC State or Local Agency is contained in Table 3 below.

Table 3

Step	Action
1	A written request for confidential retailer information is received from another WIC State or Local Agency.
2	The Retailer Coordinator will contact the WIC State or Local Agency to determine the purposed use of the information requested.
3	IF the use of the information requested is ... THEN the Retailer Coordinator will ... appropriate, release it. inappropriate, not release the information and send written notification to explain why it can not be released.
4	The Retailer Coordinator documents and signs in the Retailer's file the date of the request, dates of other contacts, persons involved, information requested, purposed use of the information, and action taken. Copies of correspondence regarding the request will be filed in the Retailer's file.

Procedure for a Person Directly Connected to the Administration or Enforcement of the Federal or State Law Request

The procedure to follow if the requesting entity is a person directly connected to the administration or enforcement of Federal or State law is contained in Table 4 below.

Table 4

Step	Action
1	A written request for confidential retailer information is received from a person directly connected to the administration or enforcement of Federal or State law.
2	The Retailer Coordinator will contact the person to determine the purposed use of the information requested. If necessary, the legal services for DPHHS will be contacted for advice or a legal opinion.

Step	Action
3	<p>IF the person is making the request on behalf of... THEN the Retailer Coordinator will ...</p> <p>a Federal agency a State agency or other law enforcement agency</p> <p>continue the process. have the entity enter into a written agreement with DPHHS specifying the release of such information may not be used or disclosed except for purposes directly connected to the administration or enforcement of a Federal or State law.</p>
4	<p>IF the use of the requested information is ... THEN the Retailer Coordinator will...</p> <p>appropriate, inappropriate,</p> <p>release the information. not release the information and send a written notification explaining why it can not be released.</p>
5	<p>The Retailer Coordinator documents and signs in the Retailer's file the date of the request, dates of other contacts, persons involved, information requested, purposed use of the information, and action taken. Copies of correspondence regarding the request will be filed in the Retailer's file.</p>

Procedure for a Retailer Request

The procedure to follow if the requesting entity is the Retailer is contained in Table 5 below.

Table 5

Step	Action
1	A written request for confidential retailer information is received from a Retailer who has received notice of an adverse action from the Montana WIC Program.
2	The Retailer Coordinator will contact the Retailer to determine if the information requested is related to the adverse action. If necessary, the legal services for DPHHS will be contacted for advice or a legal opinion.
3	<p>IF the information requested ... THEN the Retailer Coordinator will ...</p> <p>relates to the adverse action, does not relate to the adverse action,</p> <p>release the requested information. not release the requested information and send a written notification explaining why it</p>

Step	Action
	can not be released.
4	The Retailer Coordinator documents and signs in the Retailer's file the date of the request, dates of other contacts, persons involved, information requested, purposed use of the information, and action taken. Copies of correspondence regarding the request will be filed in the Retailer's file.

Retailer Peer Grouping

Introduction

Federal regulations mandate that all State agencies implement competitive pricing and price limitations to ensure that WIC participants are able to purchase the entire allotment of WIC foods authorized on the WIC checks. To prevent price gouging, peer groups have been created. Peer groups allow statistically similar retailers with similar pricing to be banded together.

Review

All retailers will be reviewed for peer group accuracy a minimum of two times a year: at contract renewal time and six months later.

This will be done to ensure retailers are properly categorized. Different elements, such as volume of WIC sales, may increase, requiring a retailer be placed in a higher peer group. This is especially true of new WIC retailers, who may just start to build their customer base.

A retailer's peer group will not be decreased, unless indicated by two consecutive reviews.

Peer Group Food Prices

Peer group food prices will be updated every three months, based on the quarterly price surveys. WIC retailers not submitting price surveys will be assigned sanction points, and may potentially lose their WIC authorization.

A list of new quarterly prices will be submitted to the retailers when data entry and price determinations are completed. This will enable retailers to ensure they stay within the "Not to Exceed" amount calculated for the WIC checks.

Monitoring Visits, Educational Visits, Compliance Purchases and Inventory Audits

Introduction

The Montana WIC Program's compliance system is designed to verify and document any WIC Program non-compliance committed by WIC retailers. Appropriate education, sanction points, suspension and/or disqualification will be imposed; pursuant to the results. Types of investigations include monitoring visits, educational purchases, compliance purchases and inventory audits. Federal regulations require that compliance purchases/investigations be conducted at ten (10) percent of all authorized Montana WIC retailers annually. Actual WIC checks will be used in both educational and compliance purchases.

Monitoring Visits

A monitoring visit is defined as an on-site visit conducted by WIC staff to verify the retailer continues to have the required variety and quantity of WIC products and is following WIC procedures. A monitoring visit will be conducted at least once during a retailer's contract period.

A monitoring visit may include either an educational buy or observation of a WIC purchase AND a review of the WIC checks accepted that day by the retailer.

A monitoring visit will include discussion with retailer staff as to WIC procedures, problems and areas of concern.

The WIC staff member will complete a monitoring review form. The completed form will be discussed with the retailer's management. Both parties will sign the form before the WIC staff leaves the retailers' store.

Educational Purchases

An educational purchase is defined as an overt purchase made with WIC checks by WIC staff. The purchase is made with the knowledge of the retailer's management, though not necessarily that of the retailer staff. The purpose of the educational purchase is to train retailer staff in the appropriate WIC transaction procedures. This purchase may help determine problem areas in retailer procedures. This training tool will NOT result in sanction points.

The educational purchase may be part of an on-site training/demonstration held by WIC staff, at the request of retailer staff and/or management. Instructions on proper procedures can be given during the purchase demonstration. Questions concerning debatable food items will be answered, or referred to the Montana WIC Program for clarification.

Educational Purchases

The educational purchase may be part of a regularly scheduled monitoring visit. Erroneous

practices will be discussed with either the staff or the management after the purchase has been completed.

WIC checks used during this purchase will NOT be processed through the banking system. The purchase will be 'voided' at the checkstand. Food products will be returned to the shelves. The WIC checks will be 'voided' and returned to the WIC staff.

Compliance Purchases

A compliance purchase is defined as a covert purchase made with WIC checks by WIC staff or designated representative(s). The purchase is made without the knowledge of the retailer's management or staff. An investigative agent (posing as a WIC participant or proxy) will attempt to obtain evidence the retailer allows WIC Program violations or fraud to be committed at that specific retailer location. The investigative agent may conduct one or more compliance purchases at a selected retailer. Retailers may be selected for cause or at random. After completion of the purchase(s) and leaving the retailer's store, a report will be filed with the Montana WIC Program.

The Montana WIC Program shall decide if a purchase investigation will be performed and whether an educational purchase may precede a compliance purchase. The decision will be based on the type of violation, statistical and financial significance of the violation and criteria for investigations.

Inventory Audits

An inventory audit is defined as the comparison of reported WIC purchases against the retailer's inventory records for a specific period.

Inventory Audits (continued)

The WIC Retailer Agreement, in *Section VI: Accounting, Auditing, Record Retention, Cost Principles, and Access to Records*, requires retailers to maintain records related to inventory and purchases for a minimum three-year period.

A WIC staff member or designated representative(s) will visit the retailer's offices. A request to view the inventory records will be made at that time. Inventory audits will not be announced in advance.

Follow-Up Procedures

The retailer will be notified, by certified mail, of the investigation, violations found and the subsequent consequences. If such notification would compromise an investigation of a violation that requires a pattern of violations, notice of a first violation will **not** be given. Failure to respond to this notification may result, in itself, in retailer suspension or disqualification.

The retailer can appeal any sanction or disqualification. Retailers must request a Fair Hearing from the Montana WIC Program. Retailers have thirty (30) days from the effective date of the adverse action to appeal the Montana WIC Program's decision.

The Montana WIC Program will notify the Regional FNS Office of any WIC retailer suspended or disqualified. If the retailer involved is part of a "chain", the chain's regional/district manager will be notified. The suspension or disqualification of a retailer due to a compliance investigation may be publicly advertised if it is determined this will be beneficial to the overall attitude toward the Montana WIC Program.

Disqualification from the Montana WIC Program may result in disqualification from the Food Stamp Program.

If you wish to talk to someone from the Montana WIC Program about the compliance purchase, inventory audit or an administrative review, contact the Montana WIC Program at 1-800-433-4298. Retailers are encouraged to resolve disputes without an administrative review.

Stocking Variety and Quantity

Rationale

Constant availability of WIC foods is an important component of the WIC Program. Participants should be able to purchase all food prescribed on the WIC checks when they shop at participating WIC retailers.

In order to assist retailers, minimum variety and quantity stocking requirements were implemented. These requirements delineate WIC's expectations of what should be available to the participants at all times. They help the retailers keep better track of WIC food items. They provide WIC participants the assurance they will be able to use their WIC checks at the authorized retailer.

Stocking Levels

Stocking levels are determined on a two-fold basis. The first determinant is the number of checkstands a retailer has. The checkstand breakdown is:

Level	Description
1	1 to 2 checkstands
2	3 to 4 checkstands
3	5 to 7 checkstands
4	8 or more checkstands

Some retailers exceed what might be expected of their checkstand level. A smaller retailer may do a large WIC business if they are the only grocer in the geographic area. In order to ensure the needs of WIC participants in those areas are met, a secondary review is used, based on the cashed value of WIC checks redeemed within the last federal fiscal year. Retailers exceeding the cashed dollar value of their checkstand level will be classified at a higher level, and expected to maintain that level's stocking requirements at all times.

Level	Monthly \$ Threshold Used to Increase Stocking Level
1	\$1,500 or more
2	\$4,000 or more
3	\$9,000 or more

The exact variety and quantity of foods required for each level can be found in Policy 9-9.

A stocking shortage is considered a violation of the retailer contract.

First Report of Stocking Shortage

When a shortage is first reported to the local agency by either the WIC participant(s) or the state office, the local retailer coordinator should:

- encourage the participant to fill out a complaint form, “documenting” their complaint;
- call the retailer to discuss the shortage, the next anticipated delivery date, and resolution;
- document the conversation in the retailer file, and send a copy to the Montana WIC

Program. The State will send a warning letter to the retailer, with a copy to the retailer coordinator.

Subsequent Report of Stocking Shortage

When a subsequent report of a stocking shortage is made, the retailer coordinator must:

- make an unannounced on-site visit to the retailer within 48 hours of the complaint;
- document the shortage, using the “Montana WIC Program Retailer Visit Report”;
- discuss the issue with appropriate store personnel (i.e., manager or department head), obtaining their signature on the visit report;

- mail the original form to the Montana WIC Program within 24 hours. The State will send a final warning letter upon receipt of the first subsequent complaint, and subsequently, sanction letter(s) to the retailer. Copies will be sent to the retailer coordinator. If the retailer is part of a chain, copies will be sent to the chain’s headquarters.

The first time a retailer is sanctioned for inadequate stock, nine (9) sanction points will be assigned. At any subsequent occasion, the retailer will be disqualified from participating in the WIC Program.

Delivery Period

‘Delivery Period’ refers to the days the wholesaler is scheduled to deliver food stock to the retailer.

Sanction Period

‘Sanction Period’ will consist of the next two delivery periods from the date of the on-site visit by the LARC.

If, at the end of the sanction period, the retailer’s stock does not meet the variety and quantity requirements, sanction points will be assigned.

Food Purchasing/Pricing

Rationale

The purchase price may not go over the “Not to Exceed” amount printed on the face of the WIC check. This means that the retailer may have to charge less than the actual cost. This requirement provides an incentive for retailers to update their prices in a timely manner. Setting a price limit is a cost-containment measure, which helps to reduce retailer fraud.

Method

Prices authorized on the WIC checks are based on the quarterly price surveys submitted by the authorized WIC retailers. (Complete description after peer groups are formed).

Procedure

Participants are to take their WIC checks to the authorized retailer. At the checkstand, should the actual price of sale for all the items being purchased go over the “Not to Exceed” amount, the retailer is to:

- accept coupons from the participant to reduce the amount of sale, if the retailer normally accepts cents-off coupons;
- ask the participant to replace a high-cost item with an authorized lower-cost item within the same food category;
- the participant may voluntarily choose to take less than what is authorized;
- if the price still exceeds the maximum value, the retailer must refuse to accept the check.

The retailer may NOT ask the participant to pay the difference between the actual amount of sale and the “Not to Exceed” amount.

Corrective Action

The LARC will call the retailer to discuss the reported complaint, and review the procedure for accepting WIC checks. Documentation will be sent to the state. This will be followed by a warning or a sanction letter from the state to the retailer, with a copy to the LARC.

Price Maintenance Action

Retailers are to notify the Montana WIC Program whenever a sudden increase in price affects the calculated maximum value. Prices will be verified by State staff surveying similar-sized retailers within the same region. If necessary, a re-calculation will be done, and a new price entered into the VMS (Vendor Management System) for the specific food item(s).

Store Sales, Specials and Coupons

Rationale

The Montana WIC Program operates a “retail” food delivery system, utilizing grocery stores throughout the state for the purchase of the WIC-authorized foods. The authorized stores are trained in proper WIC transaction policies and procedures, to ensure accurate and smooth transactions.

The Montana WIC Program is a nutrition education program. Part of the nutrition education is learning how to make wise food choices, getting the best and the most for the participant’s food dollars. Taking advantages of store sales and special promotions (such as store ‘club cards’), as well as using coupons factor into the process.

While the WIC Program is federally-funded, it is important to stretch the available food dollars to ensure adequate funding for all eligible WIC participants.

Procedure

The retailer **must** make sale prices available to WIC participants when they are making a WIC purchase. If a store ‘club card’ is required for a special promotion and the WIC participant has such a card, the retailer **must** allow the participant to take advantage of the promotion. If a retailer accepts coupons, they **must** allow the WIC participant to voluntarily use coupons to reduce the “Actual \$ Amount of Sale” for the WIC purchase.

Participants are not required to join any ‘club card’ or other program, but **must** be allowed to take advantage of the programs if they are members. To not allow such participation or the use of sale prices or promotions is a form of participant discrimination, a sanctionable offense of the WIC Retailer Agreement.

Follow-Up Actions

A WIC participant not receiving sales prices is to request the assistance of the store manager at the time of the WIC purchase. If the store manager does not allow the sales prices or special promotion, the participant is to get the names of both the cashier and the manager, and report them to the local WIC agency immediately afterwards. It is recommended that the names of any witnesses be given to the WIC staff, as well as a copy of the cash register receipt. The local WIC agency is to call the store manager to discuss the matter. On-site store training for store staff may be a required resolution to this problem.

Infant Cereal/Formula Exemption

Rationale

The Montana WIC Program acknowledges that infant formula is a costly expense. The WIC Retailer Agreement requires the retailer to stock three formulas: two standard milk-based and one standard soy-based in both concentrate and powdered formats. Retailers may lose money on infant cereal and/or infant formula if these items are not sold in a timely basis. In order to encourage retailer participation in smaller communities, an exemption may be granted upon State approval of a written request, per the Retailer Agreement.

The report of a small infant population must be verified in writing by the local WIC agency's retailer coordinator.

Exemptions will not be granted to initial applicants.

Procedure

- The retailer must submit a written request to the Montana WIC Program, specifying the exact infant food items they wish to have exempt. The only acceptable rationale for a stocking exemption is a small infant population.
- The State will verify the infant population base with the local agency and decide.
- The State will notify the retailer and the local agency retailer coordinator of their decision in writing.
- Only upon receipt of written approval from the State Office, may the retailer discontinue stocking the specific items.
- The exemption will be for the term of the present contract only. A new exemption must be requested, reviewed and granted for each subsequent contract period.

Continuing Responsibilities

- The retailer is required to post a sign in their business identifying the specific person a WIC participant should contact to order the exempted cereal and/or formula.
- The retailer is required to have the exempted cereal and/or formula in their business within 72 hours (3 business days) of the request. This must be stated on the posted sign.
- The retailer is required to submit prices for the exempted items on the quarterly price surveys. The prices submitted should be what would be charged if the items were in stock.

Retailer Monitoring

Rationale

Monitoring visits allow the Montana WIC Program to review a retailer “in action”. The monitor is able to:

- verify the store signs are posted;
- verify food prices are clearly posted either on the shelves or on the individual food items;
- examine actual stocking variety and quantity;
- review WIC checks already accepted by the retailer;
- watch WIC purchases in progress;
- discuss any problems the retailer has experienced;
- clarify any misunderstandings or misconceptions;
- offer suggestions to improve the processing and handling of WIC checks;
- use the above to determine if a potential for fraud or abuse exists.

Types of Monitoring

Monitoring visits can be classified as either ‘routine’ or ‘compliance investigation’.

A ‘routine monitoring’ visit may be either an:

- initial visit; a
- contractual visit; or an
- educational or training visit.

A ‘compliance investigation’ is performed pursuant to reports or complaints of fraud or abuse, statistical reports indicating the retailer may be at high risk for fraud or abuse, or due to the retailer’s failure to comply with requested improvements. A compliance investigation may be either an:

- inventory audit; or a
- compliance purchase.

Monitoring Staff

Monitoring staff are employees of the WIC Program who will conduct the monitoring visit. The monitoring staff for a routine visit will be an employee of either the WIC State office or WIC Local Agency office. The monitoring staff for a compliance investigation will be an employee of the WIC State office staff or their contracted designee.

Initial Visit

Definition

An initial visit is the visit made by WIC personnel to a store applying to participate in the Montana WIC Program. The initial visit is utilized to, first, verify the required WIC food variety and quantity is in stock. The visit is also the initial retailer training in WIC policies and procedures.

Procedure

- The business submits an application to the Montana WIC Program.
- The State will review the application, ensuring information is completed and correct, and minimum selection criteria is met.
- The State will request, in writing, the local retailer coordinator to visit the business. The State will send the necessary forms for the initial visit and training. The letter will state if any additional material/information is needed.
- The local agency retailer coordinator will visit the business, completing the forms and obtaining the business representative's signature on the forms.
- The retailer coordinator will instruct the business in WIC policies and procedures, and what to expect in a WIC purchase.
- The retailer coordinator will return the forms to the State.
- The State will review the visit forms, and determine if the business should be authorized as a WIC retailer.
- When the State approves the applicant, the State will send contracts for signature to the business. Authorization will NOT be given until a copy of the signed contract is received at the State office.
- Upon receipt of the signed contract, the State will send to the retailer all necessary materials, including but not limited to, the retailer stamp, store signs, complaint forms, the Retailer Reference Manual, the retailer training video, and the video questionnaire and answer sheet.

Follow-up

- The State will notify the local agency, by telephone and by letter, that the retailer has been authorized to participate in the WIC Program.
- The local agency will notify their participants that they may shop at this retailer.
- The State will add this retailer's name and city to the 'Montana WIC Retailer by City' list.

Local Agency Timeline

The retailer coordinator will have thirty (30) days from the letter's date to complete the visit and return the documentation to the State.

Retailer Education/Training

Description of Retailer Education or Training

Retailer education and training is directed at reducing errors, preventing abuse and improving program services. Retailer training is also designed to be consistent statewide. Retailer training may be conducted for the following reasons:

- Retailer is newly authorized;
- Retailer requests education/training;
- Required annual education/training, which must be an interactive session at least once every three years;
- Required education/training as directed by the Montana WIC Program;
- Retailer is one of pool of authorized Montana WIC retailers selected for routine monitoring;
- Retailer has accumulated five sanctioning points for any reason;
- Any non-compliance with the Montana DPHHS/WIC Retailer Agreement; or
- Retailer is identified as probable high-risk.

Education/training may take place on-site or off-site. It must be interactive (face-to-face) to enable questions from the retailer. Education/training will be conducted by the LARC at the direction of the Montana WIC Program. On occasion, education/training will be conducted by the Retailer Coordinator from the Montana WIC Program.

Content

Annual training will include at the following topics:

- * Purpose of the WIC Program;
- * Supplemental foods authorized by the Montana WIC Program;
- * Minimum varieties and quantities required to be stocked by retailers;
- * Procedures for transacting Montana WIC checks;
- * Montana WIC Program retailer sanction system;
- * Method by which retailers may register a complaint;
- * The claims procedure;
- * Any changes since the last education/training affecting retailers.

In addition, LARCs will be encouraged to review retailer files and contact the Montana WIC Program for topics of interest to retailers in the service area.

Attendance at/ Participation in Required Education or Training

Failure to attend interactive required education/training will result in the non-renewal of the Montana DPHHS/WIC Retailer Agreement.

At a minimum, annual training is required. At a minimum, the Montana WIC Program must offer interactive education/training once every three (3) years. In alternate years, the Montana WIC Program will determine the method of delivery of annual training.

Other education/training may be deemed required. This education/training may be as a result of sanctions and/or a pattern of errors.

Contractual Visit

Definition

A contractual visit is a monitoring visit performed in accordance with federal regulations. A contractual visit will be conducted for each contracted retailer at least once during each contract period.

Criteria

Criteria used to select retailers for contractual visits include, but are not limited to:

- retailers whose contracts will expire within the next 12 months;
- retailers in a service area being monitored by the Montana WIC Program;
- retailers classified as “high risk” but not receiving a form of compliance investigation;
- retailers having verbal complaints from WIC participants;
- retailers experiencing check-cashing problems.

Procedure

- The WIC monitor staff will enter the premises of the retailer, noting date and time of visit on the “Montana WIC Program Visit” form. The locations of the “We Accept WIC Checks” signs and use of shelf-talkers/channel strips are to be noted, as well as the general condition of the business, and the ease in locating WIC items.
- The WIC monitor staff will walk through the store, noting the actual variety and quantities of WIC foods, and the expiration dates of cereal, milk and infant formula.
- The WIC monitor staff will go to the retailer manager, introduce her/himself, explain the purpose of the visit, and request to see any WIC checks accepted that day.
- The WIC monitor staff will review the WIC checks to verify the dates are current, the dollar amounts of sale were entered correctly, and the checks have been signed by the participant. When possible, the WIC monitor will compare the checks to business/computer records to verify correct items and quantities were purchased.
- The WIC monitor staff will meet again with the manager to discuss the visit findings. The manager will be requested to sign the visit form.
- The WIC monitor staff will note the time of departure on the form.
- The WIC monitor staff will make a copy of the form for their records.
- The original form will be sent to the Montana WIC Program for review.

Follow-Up Action

- The State will review the monitoring report to ensure the retailer’s authorization criteria continues to be met.

- The State will write a letter to the retailer, with copy to the local agency's retailer coordinator, describing any problems and recommended solutions.
- The retailer will have a thirty (30) day period to submit a written response.
- The response will be evaluated as to meeting or not meeting the State's concerns. The State will either thank the retailer for their response, or write again, addressing further concerns.
- Sanction points will be assigned if merited.
- If the retailer is a member of a chain, copies of all correspondence will be sent to the chain's headquarters.

Local Agency Timeline

The local agency will have sixty (60) days from the date of the cover letter to complete the contractual visit and return the documentation to the State WIC Program.

Educational or Training Visit

Definition

An educational/training visit is defined as an overt purchase made with WIC checks by WIC staff. The purchase is made with the knowledge of the retailer's management, though not necessarily that of the retailer staff.

Criteria

Educational/training visits are scheduled based on data compiled at the State office indicating inappropriate check cashing procedures, or would be scheduled at the request of the retailer for training purposes. The educational/ training visit may be part of a regularly scheduled monitoring visit.

The purpose of the educational/training visit is to educate/train retailer staff in the appropriate WIC transaction procedures. This purchase may help determine problem areas in retailer procedures. This training tool will NOT result in sanction points.

Procedure

1. WIC staff will enter the premises of the retailer, noting date and time of the visit on the "Montana WIC Program Visit" form. Contact the retail manager and explain the purpose of the visit. Explain the following to the retail manager: *An educational visit will be done to determine any training cashiers require to complete a WIC transaction.*
2. WIC staff will select items (may be non-authorized WIC foods, larger sizes of authorized foods or non-food items) and proceed to the checkstands
 - a. Do not mix personal items with WIC items during this educational purchase.
 - b. Have a variety of eligible and non-eligible items. Try purchasing:
 - ◆ Low iron formula;
 - ◆ Fruit drink instead of juice;
 - ◆ Non-authorized cereal (Fruit Loops);
 - ◆ Infant cereal with fruit;
 - ◆ Block of cheese larger than a pound or sliced cheese;
 - ◆ 2% milk when the check states whole.
 - c. Mention to the cashier that a WIC check will be used before the transaction begins.
3. The WIC staff member should follow any instructions the store personnel may give with regard to the transaction.
4. Do not question or dispute any instructions given by the cashier.
5. Answer questions asked by the cashier with an "I'm not sure" response. Do not give a "sob

story” to the clerk. This type of reply is considered coercion and can lead to entrapment.

6. After passing through the check stands and before beginning your conversation with the store manager, ask the manager to return to the cashier, retrieve the check and void the transaction. After the check is brought back, attach the corresponding sales receipt and write void across the check.
7. Discuss the results of the visit with the retail manager.
8. Suggest the cashier(s) be allowed to listen.
9. Complete the visit form, including the signature of the retail manager.
10. Leave a copy of the visit form with the retail manager.
11. If the visit resulted in numerous errors:
 - a. Discuss the need for store personnel training. Suggest they review the Montana DPHHS training video, “Participant - How to Shop with WIC”, (check they have a copy) and offer on-site training by WIC staff.
 - b. Explain that numerous errors during an educational visit may lead to a “compliance purchase”.
 - c. Return the items used in the educational visit back to the shelves before you leave the store.

Follow-up

Erroneous practices will be discussed with either the staff or the management after the purchase has been completed. The WIC checks used during this visit will NOT be processed through the banking system. The purchase will be ‘voided’ at the check stand. Food products will be returned to the shelves. The WIC checks will be returned to the WIC staff.

LARC Future Training

The LARC will be informed of the results of the educational/training visit for use in responding to future training questions.

Compliance Investigations

Rationale

A compliance investigation is performed pursuant to reports or complaints of fraud or abuse, statistical reports indicating the retailer may be at high risk for fraud or abuse, or due to the retailer's failure to comply with requested improvements.

Types of Compliance Investigations

A compliance investigation may be either an:

- inventory audit; or
- a compliance purchase

Compliance Investigator

The compliance investigator will be a member of the State agency staff or their contracted designee. The compliance investigator, posing as a WIC participant or their proxy, will attempt to obtain evidence the retailer will allow a WIC Program violation or fraud to be committed at the specific vendor location.

Preparation for an Investigation

It is very important for compliance investigators to be familiar with the types of abuses that occur in a store. It will be important when actually in the store for the agent to be able to assess what types of abuses are probable. Some of the possible abuses are:

- Retailers willing to buy WIC checks and WIC ID Packets;
- Retailers who are discounting WIC checks and allowing a specific amount of credit to purchase any items in the store;
- Retailers who allow the participants to purchase any item in the store;
- Retailers who are allowing participants to purchase any food items in the WIC food categories regardless of check limitations;
- Retailers who are overcharging the WIC Program by filling in the purchase price on the check at a later time/date and not in the presence of the participant;
- The Retailer has a system for handling checks that results in overcharges to the Program;
- Any combination of the above.

The compliance investigators should be trained as to the types of abuse and how to determine from the available information that a particular type of abuse is going on. They should be familiar with the volume of checks handled by the retailer and should have read any complaints that have been submitted against the retailer.

Adverse Actions

The retailer will be notified, by certified mail, of the investigation, violations found and the subsequent consequences. A copy will be sent to the LARC. However, if the investigation indicates a violation that requires a pattern of violation to prove intent, notification of the violation will **not** be immediately provided. A series of investigations must follow that will either prove or disprove intent.

The retailer can appeal any sanction or disqualification. Retailers must request a Fair Hearing from the Montana WIC Program. Retailers have thirty (30) days from the effective date of the adverse action within to appeal the Montana WIC Program's decision.

The Montana WIC Program will notify the Regional FNS Office of any WIC retailer suspended or disqualified. If the retailer involved is part of a "chain", the chain's regional/district manager will be notified. The suspension or disqualification of a retailer due to a compliance investigation may be publicly advertised if it is determined this will be beneficial to the overall attitude toward the Montana WIC Program.

Disqualification from the Montana WIC Program will result in disqualification from the Food Stamp Program.

Inventory Audit

Definition

An inventory audit is defined as the comparison of reported WIC purchases against the retailer's inventory records for a specific period.

Criteria

The WIC Retailer Agreement, in Section VI: *Accounting, Auditing, Record Retention, Cost Principles and Access to Records*, required retailers to maintain inventory records and other records related to purchases for a minimum three-year period.

Procedure

A WIC staff member or a designated representative will visit the retailer's offices. A request to view the inventory records will be made at that time.

Inventory audits will not be announced in advance. The local agency will not be informed of inventory audits conducted in their area.

Follow-up Action

The retailer will be notified, by certified mail, of the investigation, violations found and the subsequent consequences. A copy will be sent to the LARC.

The retailer can appeal any sanction or disqualification. Retailers must request -a Fair Hearing from the Montana WIC Program. Retailers have thirty (30) days from the effective date of the adverse action within to appeal the Montana WIC Program's decision.

The Montana WIC Program will notify the Regional FNS Office of any WIC retailer suspended or disqualified. If the retailer involved is part of a "chain", the chain's regional/district manager will be notified.

Disqualification from the Montana WIC Program may result in disqualification from the Food Stamp Program.

Compliance Purchase

Definition

A compliance purchase is defined as a covert purchase made with WIC checks by WIC staff or their contracted designee. The purchase is made without the knowledge of the retailer's management or staff. A compliance investigator (posing as a WIC participant or proxy) will attempt to obtain evidence showing the retailer allows WIC Program violations or fraud to be committed at that specific retailer location.

Criteria

Retailers may be selected for cause, or at random. The Montana WIC Program shall decide whether any type of purchase investigation will be performed prior to authorizing such investigations, and whether an educational purchase may precede a compliance purchase.

The decision will be based on the type of violation, statistical and financial significance of the violation and criteria for investigations.

Procedure

Procedures:

1. The compliance investigator will review the retailer's file and become familiar with any problems with the retailer.
2. Training and education will be provided by the State Agency to the investigator prior to the compliance purchase. The training will include:
 - not to invoke sympathy or try in any way to convince or coerce the cashier to allow any possible non-authorized foods to be purchased;
 - the fact they may be embarrassed and if the situation does become embarrassing or hostile, leave the store immediately;
 - exactly what to purchase, and the procedures for cashing a WIC check;
 - the investigator assigned to the case will complete as much of the WIC Investigation Report Form as possible prior to the visit to the retailer;
 - the investigator will be issued a WIC ID packet by the State Agency along with WIC checks. These checks will be computer generated and copies of the checks will be attached to the WIC Investigation Report Form.
 - the investigator will drive to the retailer's place of business. The investigator observes and documents the time he/she enters the store. The investigator will:
 - a) record the number of checkout stands
 - b) select the items he/she has been instructed to purchase. (At the second compliance visit, if possible, a different cashier from the first compliance visit should be used for checkout.)
 - c) the investigator will tell the cashier before the items are rung up that he/she is a WIC participant and will be using WIC checks. If the investigator is told he/she cannot

purchase any unauthorized food items, she should return them and pick up the items listed on the WIC checks or requested by the retailer.

d) the investigator will take the receipt and the items purchased, leave the store and complete the appropriate documentation.

e) following the purchase, the investigator will complete the WIC Investigation Report Form. The receipt and any change from the transaction will be given to the State Agency. The food items purchased will be submitted to the State Agency along with photographs of the food items (unless otherwise directed).

f) at the last compliance purchase for the retailer, the investigator will photograph the store front upon final departure.

All food items obtained during a compliance purchase will be photographed by the compliance investigator and then donated to a non-profit agency. A receipt, which is filed with the final report, will be obtained from the non-profit agency acknowledging the donation.

Number of Compliance Purchases

A positive transaction is one in which the compliance investigator is allowed to purchase unauthorized food items, non-food items, exchange cash, commit fraud, or any violation of the Montana WIC Retailer Agreement. A negative transaction is one in which no violations occur.

- Two positive transactions will result in the case being closed. Sanctions will be imposed.
- Two negative transactions will result in the case being closed. Sanctions will not be imposed.
- There will always be at least two compliance purchases made at a particular retailer unless the State Agency decides otherwise.
- If there is one negative and one positive transaction, an additional compliance purchase will have to be made in order to determine if there have been two negative or two positive transactions.

Follow-up Action

The State Agency will retrieve the checks used in the compliance purchase after redemption to be used as evidence. A case file will be completed on the investigation by the State Agency. This will include:

- any reports or complaints that were used to select the retailer for a compliance purchase; the investigation report; any receipts from the transaction, and the checks used for the compliance purchase; any document of prior warnings or retailer visits; the letter sent to the retailer notifying the retailer of the compliance purchases and whether or not any sanctions were imposed; any correspondence from the retailer regarding the case, including documentation of phone contact; any materials relating to a fair hearing if one is requested, including the decision of the hearing office.

Adverse Actions

The retailer will be notified, by certified mail, of the investigation, violations found and the subsequent consequences.

The retailer can appeal any sanction or disqualification. Retailers must request a Fair Hearing from the Montana WIC Program. Retailers have thirty (30) days from the effective date of the adverse action within to appeal the Montana WIC Program's decision.

The Montana WIC Program will notify the Regional FNS Office of any WIC retailer suspended or disqualified. If the retailer involved is part of a "chain", the chain's regional/district manager will be notified.

Disqualification from the Montana WIC Program may result in disqualification from the Food Stamp Program.